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23 *Attorneys for Defendant Andrew Sherman*

24 **UNITED STATES DISTRICT COURT**

25 **DISTRICT OF NEVADA**

26 SONORO INVEST S.A., a Panamanian  
corporation,

Case No. : 2:15-cv-02286-JAD-CWH

Plaintiff,

vs.

27 ROBERT MILLER, an individual; ANDREW  
28 SHERMAN, an individual; COSTAS  
TAKKAS, an individual; and STEPHEN  
GOSS, an individual,

**MOTION FOR RECONSIDERATION OF  
ORDER DENYING MOTION FOR  
PROTECTIVE ORDER (ECF NO. 85)**

Defendants

and

ABAKAN, INC., a Nevada corporation,

Nominal Defendant.

27 Defendant Andrew Sherman (“Sherman”), by and through his counsel of record, Patrick  
28 J. Reilly, Esq. and Andrea M. Champion, Esq. of the law firm of Holland & Hart hereby move

1 for reconsideration of the Magistrate Judge's Order Denying the Motion for Protective Order  
2 (ECF No. 85) in the above-entitled action. This Motion is based upon the attached  
3 Memorandum of Points and Authorities, the papers and pleadings on file in this action, and any  
4 oral argument this Court may allow.

5 DATED this 23rd day of May, 2016.

6 /s/ Andrea M. Champion

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16 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
17 OBJECTION TO AND MOTION FOR RECONSIDERATION  
OF ORDER DENYING MOTION FOR PROTECTIVE ORDER (ECF NO. 85)**

18 **I.**

19 **INTRODUCTION AND RELEVANT BACKGROUND**

20 On March 30, 2016, Plaintiff served Defendant Andrew Sherman ("Mr. Sherman") with a  
21 First Set of Request for Production of Documents (the "RFP"). After reviewing the twenty-five  
22 requests in RFP, Mr. Sherman concluded that many of the requests were overly broad and  
23 unduly burdensome because they sought matters irrelevant to the claims and defenses in this case  
24 and given the broad definitions in the RFPs, could also require Mr. Sherman to produce an  
25 exorbitant number of documents.

26 In an attempt to resolve this discovery dispute, Mr. Sherman's counsel reached out to  
27 Plaintiff and the parties met and conferred on two separate occasions. During those  
conversations, the parties were able to resolve a number of items, including but not limited to

1 agreeing to enter into a stipulated protective order regarding the production of confidential  
 2 documents. However, a number of Sherman's objections to the RFP requests could not be  
 3 resolved through the meet and confer process.

4 Therefore, on May 16, 2016, Mr. Sherman filed both a Motion for Protective Order (the  
 5 "Motion") on the six requests the parties could not agree on (ECF No. 85) and the parties'  
 6 Stipulated Protective Order (the "Stipulation") regarding the production of confidential  
 7 documents (ECF No. 87).

8 On May 18, 2016, the Magistrate Judge issued a minute order, denying Mr. Sherman's  
 9 Motion "as moot" "in light of the [parties'] Stipulation (doc. # [87])."<sup>1</sup> ECF No. 90. The Motion  
 10 is focused on the six requests Mr. Sherman contends are overly broad and would cause an undue  
 11 burden on Mr. Sherman. The Stipulation does not address any particular requests, including the  
 12 six in dispute that are the focus of the Motion. Instead, the Stipulation only sets forth how the  
 13 parties will handle the production and filing of confidential materials. Therefore, the Magistrate  
 14 Judge was mistaken in concluding the Motion and Stipulation covered the same grounds and in  
 15 denying the Motion as moot.

## 16 II.

### 17 LEGAL ARGUMENT

18 The Court possesses the inherent procedural power to reconsider, rescind, or modify its  
 19 interlocutory orders so long as the Court has jurisdiction. *City of L.A. Harbor Div. v. Santa*  
*20 Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001). Generally, reconsideration is appropriate  
 21 if the district court (1) is presented with newly discovered evidence, (2) committed clear error on  
 22 the initial decision was manifestly unjust, or (3) if there is an intervening change or controlling  
 23 law. *See Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003) (internal citations  
 24 omitted); *Antonetti v. Skolnik*, No. 3:10-cv-00158-LRH-WGC, 2013 U.S. Dist. LEXIS 20124,  
 25 2013 WL 593407, at \*1 (D. Nev. Feb. 13, 2013) (stating that the Court applies the Rule 59(e)  
 26 standards to motion to reconsideration of interlocutory orders).

27  
 28 <sup>1</sup> In denying the Motion for Protective Order, the Magistrate Judge also granted the Parties' Stipulation (ECF No. 87).

1 Here, the Court’s decision to deny the Motion is clearly erroneous as the Motion and  
2 Stipulation cover different grounds. Mr. Sherman’s Motion “focuses on the six requests Plaintiff  
3 demands Sherman produce all documents in response, regardless of whether they are related to  
4 the allegations made against him or not.” ECF No. 85, pg. 2, lns. 23-25. Conversely, the  
5 Stipulation sets forth the parties’ agreement on how to “adequately protect material entitled to be  
6 kept confidential, and [to] ensure that protection is afforded only to material so entitled.” ECF  
7 No. 87, pg. 2, lns. 22-4. The Stipulation makes no reference to the six requests that are the  
8 subject of Mr. Sherman’s Motion. See gen. ECF No. 87. Therefore, Mr. Sherman respectfully  
9 requests reconsideration of the Magistrate Judge’s denial of his Motion for Protective Order and  
10 asks that the Motion be considered on its merits.

DATED this 23rd day of May, 2016.

/s/ Andrea M. Champion

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Andrew Sherman*

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of May, 2016, a true and correct copy of the foregoing **MOTION FOR RECONSIDERATION OF ORDER DENYING MOTION FOR PROTECTIVE ORDER (ECF NO. 85)** was served on counsel through the Court's electronic service system as follows:

## **Electronic Service:**

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